UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555-jmp

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., ET AL.,

Debtors.

- -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

June 30, 2011

10:06 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

Debtors' Thirty-Fifth Omnibus Objection to Claims (Valued Derivative Claims)

Debtors' Fortieth Omnibus Objection to Claims (Late-Filed Claims)

Debtors' Sixty-Seventh Omnibus Objection to Claims (Valued Derivative Claims)

Debtors' Seventy-Fourth Omnibus Objection to Claims (To Reclassify Proofs of Claim as Equity Interests)

Debtors' One Hundred Third Omnibus Objection to Claims (Valued Derivative Claims)

Debtors' One Hundred Eleventh Omnibus Objection to Claims (No Liability Claims)

Debtors' One Hundred Twenty-Seventh Omnibus Objection to Claims (Settled Derivatives Claims)

Debtors' One Hundred Thirty-Third Omnibus Objection to Claims (To Reclassify Proofs of Claim as an Equity Interest)

Debtors' One Hundred Thirty-Fourth Omnibus Objection to Claims
(To Reclassify Proofs of Claim as an Equity Interest)

Debtors' One Hundred Thirty-Fifth Omnibus Objection to Claims
(To Reclassify Proofs of Claim as an Equity Interest)

Debtors' One Hundred Thirty-Sixth Omnibus Objection to Claims
(Misclassified Claims)

Debtors' One Hundred Thirty-Seventh Omnibus Objection to Claims
(Valued Derivative Claims)

Debtors' One Hundred Thirty-Eighth Omnibus Objection to Claims
(No Liability Derivatives Claims)

Debtors' One Hundred Thirty-Ninth Omnibus Objection to Claims
(Inconsistent Debtor Claims)

Debtors' One Hundred Fortieth Omnibus Objection to Claims
(Duplicative of Indenture Trustee Claims)

Debtors' One Hundred Forty-First Omnibus Objection to Claims
(No Supporting Documentation Claims)

Debtors' One Hundred Forty-Second Omnibus Objection to Claims

(Amended and Superseded Claims)

Debtors' One Hundred Forty-Third Omnibus Objection to Claims (Late-Filed Claims)

Debtors' One Hundred Forty-Fourth Omnibus Objection to Claims (To Reclassify Proofs of Claims as Equity Interests)

Debtors' One Hundred Forty-Fifth Omnibus Objection to Claims (Settled Derivatives Claims)

Debtors' One Hundred Forty-Sixth Omnibus Objection to Claims (Settled Derivatives Claims)

Debtors' One Hundred Forty-Seventh Omnibus Objection to Claims (Partially Settled Guarantee Claims)

Debtors' Ninety-Eighth Omnibus Objection to Claims (Insufficient Documentation)

Debtors' Ninety-Ninth Omnibus Objection to Claims (Insufficient Documentation)

Debtors' One Hundred Ninth Omnibus Objection to Claims (Insufficient Documentation)

Motion of Counsel to Mark Glasser to Withdraw

First Motion of Mark Glasser to Extend Time for Claim

Transcribed by: Dena Page

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P R O C E E D I N G S

THE COURT: Be seated please. Good morning.

MR. BERNSTEIN: Good morning, Your Honor. Mark Bernstein from Weil, Gotshal & Manges on behalf of the Lehman Chapter 11 debtors. We are here for a claims hearing, this morning. We have a number of uncontested items and then a few contested items that mostly revolve around a similar issue. As usual, we may take some of the uncontested items out of order to avoid people getting up and down.

At this point, I'll turn the podium over to my colleague, Teresa Brady, to handle the first portion.

THE COURT: Okay.

MS. BRADY: Good morning, Your Honor. Teresa Brady from Weil, Gotshal & Manges on behalf of debtors. I will be addressing agenda items number 1, 3, 5, and 12. Each of these are nonconsensual reduce and allow omnibus objections, and each of these are uncontested today.

THE COURT: Okay.

MS. BRADY: Turning to agenda items number 1 and number 3, this was omnibus objection thirty-five and sixty-seven. Since the last claims hearing on June 2nd, the debtors have successfully settled two additional claims on the thirty-fifth omnibus objection -- this was the Central Puget Transit Authority -- and six additional claims on the sixty-seventh omnibus objection; this was with the counterparties Citibank,

Lloyds, TSB Bank, and Pentwater Growth Fund. So we therefore respectfully request that Your Honor grant a fourth supplemental order on the thirty-fifth omnibus objection and a fourth supplemental order on the sixty-seventh omnibus objection reducing and allowing these claims to the settlement amount.

THE COURT: I will do that.

MS. BRADY: Thank you, Your Honor.

Turning to agenda item number 5, this is the 103rd omnibus objection. Your Honor previously granted an amended order on this objection on May 19th which reduced and allowed the number of claims in this omni. One of the claims that was reduced in that amended order belonged to a counterparty, Pinnacle American Core Plus Bond Fund. Pinnacle never filed a timely response and to date still has not filed a response or tried to contact the debtors to our knowledge. Nonetheless, the debtors have since discovered that due to inadvertent error, the reduce and allow amount as to Pinnacle on that amended order was incorrect, and therefore, we respectfully request that Your Honor consider a second supplemental order which would revise that modified amount actually in Pinnacle's favor.

THE COURT: Happy to do that.

MS. BRADY: And finally, turning to agenda item number 12, this is the 137th omnibus objection. The debtors, in this

omni, are seeking to reduce and allow twenty-one claims belonging to nine counterparties. Three of these counterparties did not respond at all to the omnibus objection. The debtors, therefore, seek to reduce and allow their five claims on an uncontested basis.

With respect to the balance of the claims on this omni, the counterparties have either filed timely responses or been granted extensions to the time to respond by the debtors, and we have actually spoken by telephone or by e-mail to each of these counterparties, so therefore, we respectfully request that these claims be adjourned to a future hearing so that we can try to have some meaningful settlement negotiations.

THE COURT: So this is just an adjournment as to this?

MS. BRADY: It is -- we're seeking an order as to the five claims which the respondents did not respond to this omnibus objection, and then an adjournment as to the balance of the claims on this omni.

THE COURT: Fine, I'll grant that relief.

MS. BRADY: Thank you, Your Honor. And if there are no further questions, I'd like to turn the podium over to my colleague, Sarah Decker.

THE COURT: That's fine.

MS. DECKER: Good morning, Your Honor.

THE COURT: Good morning.

MS. DECKER: Sarah Decker with Weil Gotshal for the

debtors. I'll be covering agenda items numbers 2, 4, 7, and 14 through 22 in the uncontested portion of today's agenda.

Agenda item number 2 is a carryover item from the debtors' omnibus objection to claims which Your Honor previously granted. The fortieth omnibus objection sought to disallow and expunge claims that were filed after the applicable bar date. This matter is going forward today solely as to the five PIMCO claims that are listed on Exhibit 2 to this morning's agenda. Those claims are claims number 35173, 34745, 34746, 36788, and 35141. The debtors have determined that PIMCO no longer opposes the relief sought in the objection with respect to those claims. Accordingly, the debtors respectfully request that the Court grant the fortieth omnibus objection with respect to the five PIMCO claims listed on Exhibit 2.

THE COURT: It's granted as to those claims.

MS. DECKER: Thank you, Your Honor.

Agenda item number 4 is a carryover item from the debtors' seventy-fourth omnibus objection to claims which Your Honor had previously granted.

The seventy-fourth omnibus objection seeks to reclassify as equity interest proofs of claim that are based on ownership of stock in the debtors. This matter is going forward solely on an uncontested basis with respect to the claims of Federated Strategic Income Fund and Federated Bond

fun, claim numbers 15065 and 15066, respectively. The debtors have determined that the Federated Funds no longer oppose the relief sought in the objection with respect to those claims. Accordingly, the debtors respectfully request that the Court grant the seventy-fourth omnibus objection with respect to the Federated Funds claims, numbers 15065 and 15066.

THE COURT: It's granted as to those two claims.

MS. DECKER: Thank you, Your Honor.

Agenda item number 7 is a carryover item from the 127th omnibus objection to claims which Your Honor heard and granted at the hearing on June 2nd. The 127th omnibus objection seeks to modify and allow claims for which the parties have reached an agreement with respect to the claim amount, classification, and/or debtor entity that is not reflected on the claimant's proof of claim. The matter is going forward today solely as to the claims of Fannie Mae and City View Plaza, claim numbers 40611 and 36803 respectively. The objection, as to all other claims, was previously granted, withdrawn, or otherwise resolved.

Fannie Mae filed a response to the 127th omnibus objection and it later withdrew that response after debtors clarified the relief that was sought in the objection. Additionally, City View Plaza have indicated that they do not oppose the relief sought by the objection. Accordingly, the debtors respectfully request that the Court grant the 127th

omnibus objection with respect to Fannie Mae and City View Plaza's claims, numbers 40611 and 36803.

THE COURT: The 127th omnibus objection to claims is granted as to those two claims.

MS. DECKER: Thank you, Your Honor.

Moving to agenda item number 14, which is the debtors' 139th omnibus objection to claims, that objection seeks to modify claims on the claims register so that the claims are asserted against LBHI, which appear to be the debtor against whom the claim is asserted. Certain of the claims subject to this objection have conflicting information with respect to the debtor and/or case number. For example, a proof of claim may list LBHI as a debtor against who the claim is asserted, but then the claim lists the incorrect case number. In other instances, the proof of claim indicates that a guarantee claim is being asserted against LBHI, but the proof of claim lists the debtor as the primary obligor. So the debtors are merely seeking to modify the claims register to reflect the fact that the claims are being asserted against LBHI, which is the creditor against whom the claims are intended to be asserted.

The debtors did not receive any responses contesting the modification of the debtor to LBHI and we are proceeding on an uncontested basis. Accordingly, the debtors respectfully request that the Court grant the 139th omnibus objection to claims.

THE COURT: The 139th omnibus objection to claims is granted.

MS. DECKER: Thank you, Your Honor.

Agenda item number 15 is the 140th omnibus objection to claims. This objection seeks to disallow and expunge individual and noteholder claims that are duplicative of the claims filed by Wilmington Trust, Bank of New York Mellon, and/or U.S. Bank Indenture as indenture trustee for those notes. The debtors are only proceeding with respect to the uncontested claims objections that have not been adjourned or otherwise resolved. And accordingly, the debtors respectfully request that the Court grant the 140th omnibus objection to claims.

THE COURT: 140th omnibus objection to claims is granted on an uncontested basis.

MS. DECKER: Thank you, Your Honor.

Agenda item number 16 is the 141st omnibus objection to claims. That objection seeks to disallow and expunge claims that violate the Court's bar date order as they were submitted without any supporting documentation. The debtors are proceeding only with respect to those claims that are uncontested and not been adjourned or otherwise resolved. Accordingly, the debtors respectfully request that the Court grant the 141st omnibus objection to claims.

THE COURT: The 141st omnibus objection to claims is

granted on an uncontested basis.

MS. DECKER: Thank you.

Agenda item number 17 is the 142nd omnibus objection to claims. That objection seeks to disallow and expunge claims that were amended and superseded by subsequently filed claims. The debtors are proceeding only with respect to the uncontested claims objections that have not been adjourned or otherwise resolved. Accordingly, the debtors respectfully request that the Court grant the 142nd omnibus objection to claims.

THE COURT: The 142nd omnibus objection to claims is granted on an uncontested basis.

MS. DECKER: Thank you, Your Honor.

Agenda item number 18 is the 143rd omnibus objection to claims. That omnibus objection seeks to disallow and expunge claims that were filed after the applicable bar date. The debtors are proceeding only with respect to those claims that are uncontested and have not been adjourned or otherwise resolved. Accordingly, the debtors respectfully request that the Court grant the 143rd omnibus objection to claims.

THE COURT: The 143rd omnibus objection to claims is granted on an uncontested basis.

MS. DECKER: Thank you, Your Honor.

Agenda item number 19 is the 144th omnibus objection to claims. That omnibus objection seeks to reclassify as equity interests proofs of claim that are based on the

ownership of stock in the debtors. Again, the debtors are proceeding only with respect to those claims that are uncontested and have not been adjourned or otherwise resolved. Accordingly, the debtors respectfully request that the Court grant the 144th omnibus objection to claims.

THE COURT: The 144th omnibus objection to claims is granted on an uncontested basis.

MS. DECKER: Thank you, Your Honor.

Agenda item number 20 is the 145th omnibus objection to claims. That objection seeks to the modification and allowance of claims for which the parties have reached an agreement with respect to the claim amount, classification, or entity that is not reflected on the claimant's proof of claim. This objection seeks to modify the claims to conform to the parties' agreement. Counsel negotiated a small modification to the language of the order on the 127th omnibus objection and I have a redline for Your Honor's review, if I may approach.

THE COURT: You may. Thank you.

MS. DECKER: The order on the 127th omnibus objection was modified to address a concern raised by Poudre Valley Healthcare whose claims have been settled against some but not all of the debtors. Accordingly, the revised order now limits the claimant's rights to distribution from the applicable debtor or debtors, as opposed to all debtors. The debtors did not receive any responses to this 145th omnibus objection, and

we are proceeding on an uncontested basis. Accordingly, the debtors respectfully request that the Court grant the 145th omnibus objection to claims.

THE COURT: The 145th omnibus objection to claims is granted on the basis of the revised order that you have submitted to me.

MS. DECKER: Thank you, Your Honor.

Agenda item number 21 is the 146th omnibus objection to claims. The 146th omnibus objection seeks the disallowance and expungement of derivative claims that have been settled between the parties either with a payment owing to the debtors with no amounts being due to the parties or with a counterparty being granted an allowed claim against one or more debtors in exchange for a release of all the other derivatives claims that are asserted by the claimant relating thereto. The 146th omnibus objection seeks to expunge those claims as necessary to effectuate the parties' agreement.

The debtors received one response to this objection which was filed by Goldman Sachs Lending Partners, LLC in regards to its claim number 17601. Goldman's limited response and reservation of rights simply clarifies that they do not oppose the relief sought in the 146th omnibus objection. Accordingly, the debtors respectfully request that the Court grant the 146th omnibus objection to claims.

THE COURT: The 146th omnibus objection to claims is

granted.

MS. DECKER: Thank you, Your Honor.

Agenda item number 22 is the 147th omnibus objection. That objection seeks to reduce, reclassify, and/or allow a portion of certain guarantee claims that are asserted against LBHI while permitting the remaining portion of those claims to remain on the claims register pending resolution.

The parties have entered into agreements partially resolving the claims, and the objection seeks, simply, to bifurcate those claims that have been partially settled to effectuate the settlement of a portion of the claim while the remaining portion of the claim remains unresolved and pending on the claims register. The debtors did not receive any responses to the 147th omnibus objection, and we are proceeding on an uncontested basis. Accordingly, the debtors respectfully request that the Court grant the 147th omnibus objection to claims.

THE COURT: The 147th omnibus objection to claims is granted on an uncontested basis.

MS. DECKER: Thank you, Your Honor. And with that, I'd like to hand the podium back over to Mark Bernstein who will continue this morning's agenda beginning with item number 6.

THE COURT: Okay, thank you.

MS. DECKER: Thank you.

MR. BERNSTEIN: Mark Bernstein from Weil on behalf of the Lehman Chapter 11 debtors.

The next item on the agenda that I will be handling is item number 6, which is the 111th omnibus objection. This objection was previously heard in a related-to claims based on various litigations that were commenced against Lehman affiliates but to which any debtor -- to which no debtor was actually a party. These -- two parties objected to the objection. We worked out some additional language to add to these parties that nothing in this order has any effect on their claims against any nondebtor defendant in that litigation. Subject to the addition of that language, these parties have no further objection to their claims being disallowed.

And with that, we respectfully request Your Honor grant the supplemental order for the 111th omnibus objection to claims.

THE COURT: It's granted.

MR. BERNSTEIN: Thank you.

Agenda items number 8, 9, and 10 relate to objections 133, 134, and 135. Each of these objections relates to claims based on restricted stock units which are held by former employees of the Lehman enterprise. These stock units entitle the employees only to receive common stock of LBHI at some point in the future. As a result, the debtors are seeking to

reclassify these claims as equity interests, as opposed to claims against LBHI.

We're going forward today on an uncontested basis. Any responses we've received have been adjourned to a future hearing. As a result, we request Your Honor grant the 133rd, 134th, and 135th omnibus objection to claims.

THE COURT: Those three omnibus objections are granted on an uncontested basis.

MR. BERNSTEIN: Thank you, Your Honor.

Agenda item number 11 relates to omnibus objection 136. This objection seeks to reclassify claims that were filed as secured claims as unsecured claims against the debtors. The claims either checked the box on a proof of claim form that asserted they were secured or included some sort of language in an appendix that said they were secured by some sort of right. In many cases, it was a reservation of rights that we may be secured by a right of setoff at some point in the future. The debtors are not seeking at this point to affect the parties' rights to setoff, and we've added the language to the order to that effect.

In addition, it was -- sometimes it was unclear whether the party was filing as a secured claim or an unsecured claim, but for the avoidance of doubt, we included those on these objections to reclassify them.

To the extent anybody responded, we've adjourned that;

we're going forward today on an uncontested basis. And we respectfully request Your Honor grant the 136th omnibus objection.

THE COURT: The 136th omnibus objection is granted on an uncontested basis.

MR. BERNSTEIN: Thank you, Your Honor. The last uncontested item is the 138th omnibus objection. It's number 13 on the agenda. This relates to derivative contracts for which claims were filed where the debtors analyzed the derivatives and determined that, actually, the debtors are in the money on these derivative contracts or no money is owed by the debtors.

There were a couple responses received. The debtors are seeking to work those matters out with the parties separately. So we're going forward on an uncontested basis today and respectfully request Your Honor grant the 138th omnibus objection to claims.

THE COURT: The 138th omnibus objection to claims is granted on an uncontested basis.

MR. BERNSTEIN: Thank you, Your Honor. That concludes the uncontested portion of the agenda. We do have a few contested items on the agenda today, and I'm going to turn the podium over to Mike Rollin of Reilly Pozner who's going to be representing the debtors in these matters.

THE COURT: Okay.

MR. ROLLIN: Good morning, Your Honor.

THE COURT: Good morning.

MR. ROLLIN: Your Honor, my name is Michael Rollin, and I'm with Reilly Pozner in Denver, Colorado. We are special counsel to the debtors for residential mortgage-backed securities and secondary market litigation. We primarily prosecute and defend claims related to representations and warranties and RMBS transactions.

I'll be handling agenda items number 23, 24, and 25 this morning, which are debtors' 98th, 99th, and 109th omnibus objection to claims respectively. A couple of these are proceeding on an uncontested basis. I'm going to take care of them first. Those are claims with respect to -- objections with respect to claims brought by the Bank of New York Mellon. Those are proceeding on an uncontested basis. I've spoken with counsel for Bank of New York Mellon. They are not proceeding and they have not responded. The claims to be disallowed and expunged on an uncontested basis are found in Exhibit 18, and I respectfully request that the Court disallow and expunge those claims.

THE COURT: As to the ones you've identified on that exhibit, the objection is granted.

MR. ROLLIN: Thank you. The other uncontested matter that's identified in this particular omnibus objection relates to HSBC in its capacity of trustee as well. Those are also

proceeding uncontested. They have not filed a response; they have agreed to allow the claims to be disallowed and expunged, and I request the Court do so.

THE COURT: That is also granted on an uncontested basis.

MR. ROLLIN: And for the clarification of the record, those are found in Exhibit 16 to this morning's agenda.

THE COURT: Okay.

MR. ROLLIN: What is proceeding on a contested basis, Your Honor, are objections to claims of Citibank and Wilmington Trust Company as indenture trustee and successor indenture trustee respectively, and to U.S. Bank in its capacity as trustee. And those objections and those claimants in the briefing share many common elements. And in the interest of economy, I'll address them together, with the Court's permission, drawing distinctions where appropriate.

Your Honor, after giving a little bit of background, I'd like to hit on three narrow points. One is that these claimants have provided no facts that would allow anyone to assess the validity of the claims that are at issue in this hearing. These are insufficient documentation objections.

Number two, as a result, the claims do not meet the information and documentation requirements for the bar date order and the relevant case law, and as a consequence, they do not rise to the level of a properly filed claim under Rule

3001, are not entitled to a presumption of validity, and should be disallowed and expunged.

But by way of background, and just to give the Court a little bit of context, I'd like to speak about the general transaction structure and the representations and warranties that are at issue. I think that'll help frame the further discussion.

As the Court is aware, Lehman bought residential mortgage loans on the secondary mortgage market through affiliates from third parties and also some that were originated by affiliates, and they transferred through the chain of companies and were deposited into securitization trusts. Trustees like Citi, Wilmington, and U.S. Bank were appointed to administer the trust in accordance with the trust documents, and servicers and master servicers were appointed to interact with borrowers, handle remittances and those types of things.

Now, the trust agreements contain representations and warranties about the quality and characteristics of the underlying mortgage loans, and it's these representations and warranties that form the significant basis of the claims at issue. But it's worth noting -- and we'll come back to this point later because it's an important one -- that not all the representations and warranties were given by the debtors. In quite a number of instances, the representations and warranties

of the unaffiliated sellers were simply passed into the trust.

The trust agreements also had a separate obligation, and that was to require the depositor to tender the loan documents on a loan-by-loan basis, and they would go to a custodian that was working for the trustee who would verify that there were no errors or omissions in the documents and they would provide -- they call those document exceptions -- and they would provide an exception report and under certain circumstances, the depositor would have an obligation to cure those. And that is also a very significant portion of U.S. Bank's claim. I believe Citi has document exceptions, as well; they just haven't provided us any information about them.

Both the representation and warranty claims and the document exception claims have a series of elements and conditions precedent set forth in the relevant contracts, and those are all governed by state contract law as to whether liability arises.

As to the claims in this case, the trustees' combined claims cover just over 1.1 million residential mortgage loans: about a million from U.S. Bank and about 70,000 from the City/Wilmington group. And the trustees demand payment for the entire aggregate unpaid principal balance of all 1.1 million loan.

Now, what we did was, to the extent that the claimants provided any information whatsoever that purported to support a

loan-level breach, that is, any breach information at all, regardless of whether it satisfied all of the elements of liability under the contracts, or if they provided us a document exception, whether or not it was material and whether or not it was harmful, two of which are required elements for liability, to that extent, we are not pursuing disallowance at this time. We want to -- we'll review those, determine whether there's a -- how to proceed, based on that. But if they gave us anything, we're not proceeding. And the schedules attached to our reply papers lay that distinction out.

What we are proceeding with and what we are asking the Court to disallow are approximately -- claims based on approximately 800,000 residential mortgage loans for which the claimants have provided no factual basis for liability, no breach evidence or specific allegation at all. About 740,000 of those are within the U.S. Bank group, and approximately 70,000, save maybe 60 or so loans, are in the City/Wilmington Trust Company group. Not only have they not provided us any information, there's actually evidence to support -- that would contradict the validity of these claims.

With respect to Citi, attached to the declaration of Keri Reed, which is part of our reply papers, is a notice and request for direction sent by Citibank to the certificate holders in all of the deals. And it tells them, page 2, paragraph 3, that the trustee has not independently analyzed

whether the claims set forth in the proofs of claim will be allowed. And on page 1 at paragraph 2, the proofs of claim were filed by the trustee as a protective matter in order to avoid the loss of rights against the debtors. In other words, they haven't analyzed whether they have a claim at all. They filed the claims prophylactically. In fact, Your Honor, their loans that are in these deals are performing at a rate of just over eight-one percent; that's also, I believe, in Keri Reed's declaration.

Now, loan performance doesn't necessarily tell you whether there's a breach or not. You can have a breach where a loan doesn't go into default. You can have a loan that goes into default that doesn't have a breach. But an eight-one percent in those deals is indicative of whether there are material breaches, certainly in the aggregate, which was the nature of their claim. In fact, Citi concedes that if you demand -- and this is exactly what they did -- but if you demand the entire unpaid principal balance of the loan pools, that that would be -- their quote -- "it would grossly overstate the amount of the claims". Their language is: "The Trustees do not contend that the claims should be allowed in an amount equal to the aggregate amount of the underlying mortgage loans in each transaction; doing so would grossly overstate the amount of the claims." That's from their response brief at page 8. But that's exactly what they did, until we objected.

And they still haven't modified their claim amount. They're still -- technically, their demand is for the entire UPB. The same is true for U.S. Bank, and the same is true for lots of trustees. Rather than vetting, they just sort of dumped it and claim liability on every single loan in every single pool.

U.S. Bank's -- the evidence that calls U.S. Bank's claims into question, I think, is even more compelling, Your Honor. U.S. Bank also made a claim for the aggregate unpaid principal balance for all of the mortgage loans in all of their deals. Now, their securitizations are performing at a rate of sixty-seven percent, but more importantly, U.S. Bank sends out remittance reports to its certificate holders, and in 60 of the 226 at-issue transactions, they state right on their remittance reports -- and these are only two months old -- that they know of no material breaches, and yet they've made a claim against the debtors for material breaches for every single one. Your Honor, they've not evaluated whether they have claims with respect to those 800,000 loans, and they haven't provided us any information with which we can evaluate whether there's liability as to those 800,000 loans. I've pointed out some of the things, even without having an opportunity to review any documentation, that suggest that their claims are grossly overstated.

THE COURT: Well, let me ask you this; how could that be done?

MR. ROLLIN: How could what be done?

THE COURT: What you just said; how would you determine material breaches with respect to the pool of loans.

MR. ROLLIN: Sure, I'm glad to answer that. I'm glad to answer that because that's exactly what I and my firm do on behalf of the debtors when we're prosecuting representation and warranty claims out there in courts across the country and are doing so now. We -- the debtors have a process by which -- and this is on their whole loan portfolio, right, loans and losses that are Lehman's and have not been securitized. We simply -- the servicer has mechanisms and the debtors have mechanisms. We have an infrastructure by which we evaluate loans using whatever criteria we think are appropriate to determine whether there's been a breach.

So here are the elements. You have to have a breach of a representation and warranty that causes a material and adverse impairment on the value of the loan and there's a contractually-defined repurchase price that's used. Then you have an obligation to give notice. The debtors have that mechanism and have used that mechanism pre-bankruptcy for quite a number of years. I've been doing this since 2007; they've had other lawyers who were doing it beforehand.

So there is a mechanism to go through your loans, using whatever criteria you want. For example, you have an originator that you think is problematic or that you had to

terminate because of some problem. You think there may be problems with their loans. You go through their loans and figure out whether or not there's a potential for breaches. You dig down. If you find them, you prosecute them, you plead them, or you at least give notice and try to work it out. So that -- now, the fact that it can be done is reflected by the fact that U.S. Bank, for example, found 727 breaches, and they sent that information to us after we filed the objection and asked for it. And we are no longer seeking disallowance for those claims.

So it's capable of being done; we do it in courts across the country. U.S. Bank and Citi have participated in loan repurchase litigation, primarily through Aurora Loan Services, the master servicer, at least since the end of 2006. So you vet the loans, you find the breaches, you give notice. If the counterparty doesn't respond, you prosecute, if that's what you choose to do in your business judgment.

THE COURT: So how could this have been done differently by these institutions approaching the bar date. Is it your position that what they should have done was to go through a loan-by-loan review to determine the existence of breaches?

MR. ROLLIN: Well --

THE COURT: Because that doesn't seem like a reasonable exercise.

MR. ROLLIN: Let me see if I can -- here's how it works in practice, and I think their lawyers will agree, if they know. In practice, the trustee or, through its servicer, doesn't even begin to look for breaches until a loan goes into default. As I said before, a default isn't necessary to have breach. You can have a breach without a default. But as a business decision, that's what they choose do to because they think it would be -- and I agree -- it would be a significant task to do otherwise, but that's not to say that you can't, or that in the interest of the parties who you're trying to protect, you shouldn't. You can look at pools and see that they have a very significant, for example, default rate and then grow concerned about that. Use analytics, and then dig in a little bit deeper. And I think that they could have done that and they have done that and they did that pre-bankruptcy. And pre-bankruptcy, they knew to sue the transferors, where liability -- in our briefing, we talked about the different channels through which Lehman acquired loans. There are bulk sellers who are called transferors in the trust documents, there are correspondent lenders that sell on a more fluid basis through Lehman Brothers Bank to Lehman Brothers Holdings, and then there are some Lehman originations. Well, under the trust documents, including the trust documents provided as exhibits by Tim Pillar from U.S. Bank just yesterday or the day before, it's -- the trust agreements specifically say that if you

have -- if a trustee has a representation and warranty claim on a transferor-originated loan, the first channel, their only recourse is against that transferor, and specifically not against Lehman. In pre-bankruptcy, that's precisely what they did through Aurora Loan Services who was prosecuting the claims at the time. But now that we're in bankruptcy, they just took everything, their entire portfolio, and dumped it on the debtors and then placed on the debtors the burden of going through it finding out, no, this is a transferor loan or this is a loan for which you didn't give notice, which is the condition of proceeding. So they can do it; they have done it. As a business decision, in these cases, they've chosen not to do it, and instead, placed the burden on the debtors to do it.

Does that answer the Court's question?

THE COURT: I think you have answered the question, but I'm still a little confused as -- well, I'll express confusion when the objectors come forward, as well, as to what relief you're seeking today with respect to these matters as to which issue has been joined because it seems to me that there is an exercise that probably needs to be done on a loan-by-loan basis that presumably servicers are capable of doing. And are you suggesting that what you are seeking today is, in effect, disallowance of all claims to the extent those claims have not yet been proven to the satisfaction of the debtor by virtue of at least the identification of loan defaults.

MR. ROLLIN: We'll not even ask that they be proven to the satisfaction --

THE COURT: I understand; to the extent that anybody has come forward with even a scintilla of proof with respect to the existence of a loan default, you are not seeking relief. But you are seeking what amounts to elimination of all claims to the extent that no one has come forward with any proof of any sort with respect to loan defaults as to the balance of the loans; do I understand that right?

MR. ROLLIN: I don't think that loan defaults are the issue. It is -- the issue is whether they've identified a breach. And so what we're asking be disallowed are all claims on all loans for which no breach of any representation of warranty has been identified.

THE COURT: Okay.

MR. ROLLIN: Thank you.

THE COURT: And there's no equivalence between breaches and defaults?

MR. ROLLIN: There -- to say there's no -- I'm not saying there's no equivalence; I'm saying that default is not a requirement of breach and breach is not a requirement of default, although servicers and trustees do use default as a way to limit the population of loans they go through, because they don't start looking at them until they go into default for breaches of representations and warranties, and in fact, even

then, they don't go through all of them. They typically make decisions based on whether it's a particularly troublesome or concerning originator or whether it's a very high loss. I can't speak specifically to what these trustees have done; I understand that's the general practice.

THE COURT: Okay.

MR. ROLLIN: But one point to make in that context, Your Honor, is that these are pre-petition breaches, right? The contract was breached, if at all, at the time of the closing of the deal because the representations and warranties were as of the closing. The document exceptions, they'd have to give those to us, to the debtors -- specifically to the depositor 180 days after closing and only if the depositor then didn't cure material document exception that was to be agreed upon in good faith by the parties, process that didn't take place, only then would a breach -- so these are all pre-petition. They would like to characterize them as contingent, but by not looking for them because that's your business decision, that does not make a pre-petition noncontingent claim a contingent claim.

Now, Your Honor, under the bar date order, as you know, they are required -- claimants are required to provide the factual and legal bases for their claims and the order requires that they do so with specificity. And in practice in the courts, including in bankruptcy courts in this district is

in the context of mortgage-based claims, you provide a summary of information and then make the underlying documents available to the debtors because everybody realizes it is very voluminous. And that is exactly the process the debtors tried to implement. In the fall or so in 2010, we began a series of ongoing communications with the claimants including these claimants, and we created a spreadsheet, a form spreadsheet that they could fill out with key data points for each loan, and we asked them to complete it. Citi gave us six loans; U.S. Bank gave us zero loans. Only after we filed the objection did some more information come in: 727 loans from U.S. Bank, the same 6 loans from Citi. To the extent that we had rights -- and this is an issue I'll talk about in a moment, but to the extent that debtors have rights to information, we found a few more breaches: twenty-five for U.S. Bank, fifty-three for Citi. And we're not seeking disallowance for those, of course. But only after we filed the objection did they give us some information and this summary, and otherwise, otherwise nothing.

Now, without information about the claims, we have no way -- the debtors have no way to determine the validity, and this is all the more true when we consider that there is evidence that the creditors themselves don't know whether they have claims. They just filed prophylactic claims in the entire aggregate amount for every single loan in their deals. Under the procedure order, Your Honor, insufficient documentation --

a document that is -- pardon me -- when a claim does not provide sufficient documentation for the debtors to evaluate the validity of a claim, that is a ground for disallowance, the rationale being that insufficiently documented claims of these types are simply not properly filed under Rule 3001, and are, therefore, invalid. No presumption of validity arises.

Now, briefly to touch on the claimant's responses, we talked about one of them a moment ago, and that is they characterize these claims as contingent claims. But these are not contingent claims in the meaning of the Code. These breached occurred under state law well before the petition, and merely not looking for them or not creating an infrastructure to look for them or making the business decision to not look for them does not convert them to contingent claims. There's no future event upon which liability will be determined.

The other reason they say that they don't have to provide information is they say the debtors have access to the information. Well, the debtors don't. Aurora Loan Services is a nondebtor subsidiary that serves as a master servicer for a great many of these loans, but Aurora Loan Services has a separate contractual relationship with the trustees that's created in the trust documents, and they can only provide that information to the trustees. We've asked them, and they won't give it to us except with these exceptions. There are certain transactions for which SASCO, the depositor, does have rights

to the information, and where SASCO has those rights, the debtors have used them and obtained at least facial breach information for the loans that I just identified: twenty-five additional loans for U.S. Bank and fifty-three additional loans for the Citi/Wilmington Group. And so their argument on that is just incorrect. It doesn't reflect a thorough understanding of the transaction and the relative rights and responsibilities of the parties.

So, Your Honor, back to my original three points, they've not provided us -- they have a requirement to provide sufficient documentation to evaluate the claims both under the rules and under the bar date order. They have not provided that information, and as a result, we respectfully request that the claims to that extent be disallowed and expunged.

If the Court doesn't have any other questions, I will sit down.

THE COURT: No, I'm interested in hearing from the objectors.

MR. ROLLIN: Thank you, Your Honor.

THE COURT: In any order you choose.

MR. FAGONE: Good morning, Your Honor. Michael Fagone on behalf of Citibank, N.A. and Wilmington Trust Company in their respective indenture trustee capacities.

Your Honor, like my colleague, I have three main points that I'd like to emphasize, and I'll articulate --

THE COURT: Are they the same points?

MR. FAGONE: They're the same points, but maybe the opposite side --

THE COURT: Fine.

MR. FAGONE: -- of those points, Your Honor. First, Your Honor, the trustees, we don't believe, have been dilatory in providing information to the debtors or discussing these claims with the debtors.

Second, Your Honor, we don't believe that the debtors are correctly comprehending the claims either as filed or as they've later been described to the debtors.

And third, we believe that the requisite specificity for the claims has, in fact, been provided, and we believe that we met both the letter and the spirit of the Court's bar date order. So those are the three points, Your Honor, and I'll touch on them briefly, if I might.

THE COURT: Okay.

MR. FAGONE: On the first point, I think it's worth noting that the proofs of claim were filed in September of 2009. And we first heard from the debtors regarding these claims in October of 2010, more than two years after these cases were commenced. We recognize that the debtors and all of their professionals have been extraordinarily busy in this case, and we're not suggesting that they should have come to us sooner. We are only pointing out, however, that it's not

entirely correct to suggest that the trustees have waited for two and a half years to engage in a dialogue with the debtors about the claims. That's not accurate.

THE COURT: Well, is it correct that these were, in effect, protected proofs of claim that were filed without conducting any meaningful diligences to the true amount of the claims?

MR. FAGONE: These -- yes, Your Honor. These claims were filed as contingent and/or unliquidated, and I think that's a point that the debtors may be missing, here, is we filed them and indicated on the addenda that we weren't sure what the amount of the claims was. The reason that we weren't sure of that, Your Honor, is something that I think you hit on in colloquy with counsel: doing a loan-by-loan analysis of the claims would be extraordinarily expensive and burdensome, and that's something that we hope to avoid through discussion with the debtors, but we were in a position, we believed, where we needed to file the claims or risk having them be barred for failure to meet the bar date. So we filed them and we tried to -- and I think we were successful -- indicate that they were contingent and/or unliquidated as to amount. So -- and we don't stand before this Court and suggest that the claims should be allowed in the total aggregate unpaid principal balance of the mortgage loans in each trust. That would not be an accurate presentation of what we think the amount would be.

THE COURT: But isn't there a problem, when you come right down to it, that goes to the true nature of the claim and whose burden it is to determine that because the notion of the bar date is to put the debtor on actual notice of actual claims, not claims that are theoretical. And to put in a claim for the full amount is to be protective, but also to be completely misleading.

MR. FAGONE: Two things, Your Honor. Yes, I agree that the purpose of the bar date is to put the debtor on notice of claims. Had we simply filed proofs of claims that listed the aggregate unpaid principal balance of the mortgage loans and said that's our claim, we would like it allowed, I would agree with Your Honor that that would be misleading. But that's not what we did. Our -- the addenda to our proof of claim which is attached to our response, in our view, made it very clear that we were saying we don't know yet; we don't know yet whether any of these 80,000 loans will go into default such that the master servicer will then investigate whether there has been a breach of a rep or a warranty or whether there's a mortgage loan defect claim. So that -- there was no intention to mislead anyone.

Subsequent to the filing of the proofs of claims, the debtors have asked for some information. They've asked for loan-level data -- they've never once asked us for the exception reports -- they've asked us for the loan-level data,

and we went to the master servicer and asked for it. What we received, we provided. We haven't chased down every last bit of information the debtors have provided for two reasons. One, that would involve incredible expense and time, and two, the debtors have consistently maintained the position that there will never be any sort of estimation of unliquidated claims of this type in this case. So for us, we had difficulty seeing why the trustee should be put to the burden of chasing down this information, if we were only then going to be faced with the response, that's great, but you didn't know the amount of the claim as of the bar date; therefore, the claims are disallowed.

Your Honor, I think it's worth noting that the debtors acknowledge that there are valid, legitimate claims here. And I point just briefly, Your Honor, to the disclosure statement that the debtor filed yesterday. And under the heading "residential mortgage loan representation/warranty claims" which appears at page 45, the debtors write, and I'll just read briefly, if I could, "Based on the debtors' review of claims to date and the debtors' knowledge of the success rate of asserted repurchase and indemnity claims in the market, the debtors estimate that the amount of the allowed claims, based on the debtors' repurchase and indemnity obligations for residential mortgage loans could ultimately be approximately 10.4 billion." Those are the debtors' words. These are not fictitious claims.

We concede, Your Honor, in light of the debtors' objection, that the proofs of claim may not carry prima facie effect as to amount, but we believe that they do carry prima facie effect as to validity, and I think the debtor may be confusing those two separate concepts: validity on one hand and amount on the other.

That, Your Honor, leads me to my second point, which I've touched on, and that is we don't assert that these are noncontingent liquidated fixed claims. That's not -- that was never the assertion, and that's not the position we're taking before the Court this morning. What we don't know, and we admit we don't know, is whether there are defaults. The Reed declaration suggests that eighty-one percent of the loans in the transaction are performing. And if that's true -- I don't know whether it is, but if that's true, there's a substantial likelihood that additional breaches will be discovered in the future. And those breaches may give rise to liability on the part of the debtors, liability that I believe the debtors have admitted. The loan documents -- the transaction documents are reasonably clear.

It's reasonable, then, I believe, to assume that some portion of the nineteen percent of the loans that aren't performing, which is some 15,000 mortgage loans, may result in losses for which the debtors might be liable. We don't know that because when there's a default and a breach that's

discovered, there will need to be a complicated analysis of a multitude of documents that are involved, as counsel alluded to. Some of these transactions involved origination by correspondence and reps and warranties were passed along, and in certain instances, the debtors are insulated from liability if those transferors have liability. But there are a lot of documents that are going to have to be looked at and analyzed to decide whether there is liability by the debtors, and if so, the amount of that liability once breaches are discovered. But the --

THE COURT: Can I ask you a very --

MR. FAGONE: Yes, certainly.

THE COURT: -- basic question about this distinction between defaults and breaches? It's the same confusion that I exhibited during the debtors' presentation. Do you acknowledge that there is no equivalence between defaults and breaches of these warranties, and then I really have a question that goes to ordinary course practice? I assume that it is possible, although it might be very expensive, to identify whether or not there are any breaches in the entire portfolio that includes performing loans, and that based upon what you said, there's an ordinary course practice of not looking for breaches until there is a default. Is that correct?

MR. FAGONE: I believe so, Your Honor, yes. I believe it's possible for someone to take a mortgage loan file and

examine it and determine whether any of the representations or warranties made by the debtors or the transferors are materially incorrect. So the answer to that is yes. And I believe that the answer to Your Honor's question about the ordinary course is also correct. When these loans -- when the borrowers on these underlying mortgage loans are making their monthly mortgage payment and they're paying their taxes, and they're otherwise doing what they're supposed to be doing, I don't believe that there's any reason to or that the business practice involves taking the loan file out and auditing that file to see if there's a problem. So I think there is an equivalence, Your Honor, from a practical sense; maybe not from a legal sense in terms of what the documents require or describe, but I believe that there is an equivalence.

THE COURT: Okay.

MR. FAGONE: Have I answered Your Honor's question?

THE COURT: That answers it; thank you.

MR. FAGONE: Okay, thank you.

Just moving on, Your Honor, lastly -- I'm sorry, on this distinction between validity and amount, we don't believe that the inability today, at this particular stage of the contested matter, to know the precise amount of the claims means that the claims should be disallowed, which is what I understand the debtors to be seeking. Nothing in Section 502 provides for that disallowance on that basis; in fact, Section

502(b) prohibits disallowance, simply because a claim is contingent or unmatured. There needs to be something else, I think, under 502(b)(1) before a claim can be disallowed, at least on that basis, and the debtors haven't suggested any other basis than 502(b).

Section 502(c) deals with estimation of contingent or unliquidated claims in certain circumstances that may not be present here, but the existence of that section, combined with Section 502(b), in our view, shows that an inability to know the amount doesn't translate to disallowance, as the debtors suggest.

Just moving on lastly, Your Honor, to the bar date issue briefly, we think that we met the bar date. We recognize that the bar date order was the product of protracted negotiation and that it has some custom-made features. We think, however, we complied with its terms by providing supporting documentation. We admit that we did not provide every single transaction document or all of the exception reports when we filed the proofs of claim. We think that would have been burdensome on the trustees, burdensome on the debtors at that stage, and burdensome on the claims agent. The bar date order required certain types of information with respect to derivatives claims and with respect to guarantee claims, as I'm sure Your Honor recalls. It didn't say anything about specific information on residential mortgage loans.

Notwithstanding that, we made a good faith effort to put the debtors and the estates on notice of the bases for our claims, and we think that was all that was required. The debtors, in fact, concede that in our proof of claim, we identified the contractual provisions that might give rise to liability. So we think that that was sufficient to meet the bar date order's requirements, Your Honor.

And lastly, in conclusion, we agree with the debtors' suggestion that evaluating these claims would be difficult and expensive. We agree with that. We also believe, however, that unless the parties can come up with some sort of a resolution for these types of claims, the Bankruptcy Code requires a process to determine the amount of the claims. And I think the Court should be aware that there have been discussions between the debtors and between similarly-situated trustees about a process that could be used to resolve a significant universe of claims in these cases. Those discussions haven't materialized, but they are ongoing, and if they're not fruitful, we believe that the parties will be required to undertake significant effort at significant expense to determine the amount of the claims for purposes of allowance.

And that's all I have, unless there are questions.

THE COURT: I do have a question in reference to your last comment. Is it your view that these objections should not be allowed so that a process can go forward which would result

in potentially a consensual agreement as to some percentage of loans or some percentage of claim amount that might be deemed allowed, or alternatively, that there would be a need to go through these loan files, loan-by-loan, regardless of default in order to actually determine the breaches?

MR. FAGONE: The former, Your Honor. In other words, I want to be careful because I don't want to inform the Court of the precise discussions that have been taking place, but --

THE COURT: I don't want to know about that.

MR. FAGONE: Understood. But no, Your Honor, I think the expectation is that if these objections are overruled, one of two things would happen. First, the parties would continue working toward some sort of efficient resolution of the claims, whether it's via a protocol like the one that was used in New Century, or whether it's through some other mechanism, I don't know yet. That's one option. The other option, Your Honor, is that the debtors join the issue by raising objections on the merits and the parties are tasked with coming up with a scheduling order for hearing to determine the amount of the claims, which I think would involve expert testimony and analysis and analytics of the type that counsel referred to in his remarks to the Court. So those are the two options that I see that we think would be appropriate, under the circumstances.

THE COURT: All right, thank you.

MR. FAGONE: Thank you, Your Honor.

MR. ROLLIN: Your Honor, just speaking with counsel for U.S. Bank, it might be useful for the Court if I just have some brief reply remarks with respect to Citi, and then U.S. Bank proceed, and then reply with respect to them just to keep things a little bit more organized. Would that be all right?

THE COURT: Wasn't what I had in mind, but if it's --

MR. ROLLIN: We'll do whatever the Court has in mind.

THE COURT: What I have in mind is hearing all the objectors, and then you can respond in whatever order you prefer.

MR. ROLLIN: Yes, Your Honor.

MR. PRICE: Good morning, Your Honor. Craig Price on behalf of U.S. Bank which serves as trustee in these cases for more than 200 residential real estate trusts. As both the debtors and Citibank has made clear, the objections relate to, first, representation and warranty claims, as well as document deficiency claims. The various trust agreements contain about twenty -- generally twenty representations and warranties that needs typically relate to the quality of the mortgages that were placed into the trust. While many of these, as the debtors have made clear, specified that the originators, not necessarily the debtors, will be responsible for the breaches, the debtors did specifically retain a number of representation and warranties in the trust agreements.

In addition, an affiliate of the debtors has also served as an originator. The trustee does not administer the individual loans. These various loans are administered by servicers who are overseen by master servicers. In order to make a claim for the breaches of representation and warranties, the trustee has requested from the master servicers a list of all the mortgages known with breaches of representation and warranties. The trustee has provided this information to the debtors, as the debtors made clear, and the debtors assert to date that there have been claims for approximately 800 individual mortgage loans.

As I said before, the mortgage loan deficiencies relate to the documents actually inside the mortgage files. These documents are retained by custodians who review each of them for a nonsubstantive basis to determine whether all the appropriate documents are there. They don't look at -- they don't make inquiries to whether if a document's executed that an actual individual executed that, that the proper person executed it. They just make sure these documents are signed. And we have transmitted reports from the custodians to the debtors that approximately twenty-six percent of the loan files contain possible deficiency claims, which, considering that U.S. Bank has over a million mortgages, that's 260,000 files that contain possible deficiencies.

Contrary to the debtors' claims, U.S. Bank has

provided over a million pages of documents to the debtors. These include all of the transactional documents with respect to over 200 securitization transactions.

THE COURT: Let me just understand --

MR. PRICE: Sure.

THE COURT: -- what that process has been, though. You didn't provide those documents at the time of filing the proof of claim. I assume those --

MR. PRICE: That -- that's right.

THE COURT: -- documents had been filed with the debtor as part of some ongoing process of --

MR. PRICE: That's right.

THE COURT: -- updating the claims.

MR. PRICE: We created an extranet site where we uploaded all of those documents because it's my understanding even the documents that the debtors themselves were involved with they didn't have those, so we created a -- essentially a web site for all of the transactional documents. And we've been -- that's been an ongoing process. I know as recently as two weeks ago they asked for certain certifications, and we've given them those. So it's been an ongoing process for quite some time that's involved an incredible amount of expense and time by numerous parties.

THE COURT: Okay. At this instance, did that process -- was that something that you wanted to do, or

something the debtor --

MR. PRICE: That was the debtors' request.

THE COURT: -- requested, or something that was agreed to by both parties?

MR. PRICE: It was agreed to by both parties that we would do it. And we generally have been responding to the debtors' requests for documents, but we've also contacted them, and you know asked, what do you need; what documents do you want? So I think we've been very cooperative and tried to do this as a process together in terms of getting them the documents that they need.

THE COURT: Okay. Well, beyond this factual predicate faired argument, what are your legal arguments?

MR. PRICE: Okay. Well, just let me finish by saying that the debtors have -- with respect to all the individual loan files that we have given them, they've withdrawn their claims.

So what we're talking about are those claims that have yet to be revealed to the debtors or given to them with regard to specific breaches of individual loan files. And what we would say is that, you know, most of these files, while we don't know if they have defects or not, they're essentially latent defects. They remain hidden in these files. We can't look in an individual loan file and know that a particular person is going to, you know -- if their mortgage -- if action

is taken with regard to mortgage, for instance, if the person goes into default, that they will then claim that they didn't actually sign this document, or that they were fraudulently induced into, you know, a mortgage that they couldn't afford, or that the appraisal was wrong. We can't -- just from an -- on a loan-by-loan basis, even if we undertook this sort of investigation that the debtors are suggesting that we undertake, we couldn't possibly find that information because on a review of the file you wouldn't know if someone was fraudulently induced into a mortgage that they couldn't afford, or that they didn't actual -- even if there's a signature, that someone else signed this, or that there -- that they -- there was insufficient documentation about their income. I mean you just wouldn't be able to find that. And so a substantive review of every single mortgage file wouldn't be sufficient in this instance in order to recognize where claims for breaches of representation and warranties exist. It just -- it wouldn't happen, and that process in of itself would be incredibly expensive.

And if you looked at all of the files, you also wouldn't know which ones are going to go into default, for instance; they may be performing. There may be reps and warranty violations that exist, but the people are paying their mortgage on time. So the process of going -- of doing that, it's the reason why in the ordinary course they don't do that.

They look; they wait until some sort of action has been taken.

And those 800 mortgage files that we have given to the debtors, those are ones where we know that there are breaches. But the remaining, you know, million mortgages minus these 800, we don't know if those people will go into default. We don't know if there are latent breaches with regard to any of those mortgages, and that's why we filed our proof of claim for the entire amount. But as Citibank made clear, we did it the same way.

We were clear that this was done as a prophylactic measure, as a protective measure for the bank, and that this is an unliquidated amount. We never tried to mislead them and say we're seeking the entire amount of all of the mortgages and their -- it's just that we can't possibly know. We're not going to re-underwrite every single mortgage because even if we did that we wouldn't possibly know what -- and you know, for instance, there's an example involving the GreenPoint transaction, which is one of the transactions that's at issue here. There's an insurer, actually, in this transaction, and that insurer has sued because -- claiming that these loans were not what they were made out to be. The originator has sued -- has defended that by saying that these aren't mortgages that should have ever been securitized. In that instance, there -- and we've told the debtors about this. They've been in receipt of all the litigation documents and various letters going back

and forth that, if the originator succeeds, all of these mortgages would need to be repurchased because that would be one of the reps and warranties that they were allowed to be transferred. So that litigation hasn't been finalized in any way, so there's no possible way of knowing whether these mortgages have breached their representation and warranties. And those mortgages may be performing mortgages, so an individual review of the files within that transaction, they may be -- that may be my mortgage, and I --

THE COURT: So recognizing that this is a problem that ranges between difficult to impossible, what are you proposing?

MR. PRICE: Well, I think that -- I think there's two things. One, we would propose there's a lot of different ways that this could be done. A reserve could be set up, and that's been done in several different cases: the Conseco Finance case, the DVI bankruptcy proceeding. I know in Conseco that involved something somewhat similar in that it was manufactured housing, these breaches in representation and warranties. They put a mechanism in place that actually, you know, provided money for when there was a loss that it would be paid out, and that's one way we could do that.

Another way is to develop some formula to liquidate the claim, and that's been done before in American Home Mortgage, New Century, and the Aegis Mortgage cases. In order to -- and that would have the effect of not, you know, forcing

the debtors and the trustees to expend vast amounts of money investigating files, which even after that investigation they wouldn't be able to determine whether there were actual breaches of representation and warranties in these files.

And the only other thing I would like to say in terms of a legal argument is the two cases that were -- have been cited by the debtors that require that the actual mortgage loan file by file be attached were both Chapter 13 cases where there was one individual. And in that case, they did require the mortgage to be attached, but we have a million mortgages: we couldn't possibly attach all of those to our proof of claim form. And even we did, it wouldn't be helpful to both to the debtors or to the trustee because we still wouldn't know which of those individual loans has a problem. If we located one that did have a problem, it may be performing.

THE COURT: So is it your position that the insufficient documentation objection is, in effect, one that should be overruled because there is simply a practical impossibility to comply with the documentation requirement?

MR. PRICE: That's right. I mean I think it's impossible --

THE COURT: I'm just trying to understand your position as a matter of law.

MR. PRICE: Right. I think that in terms of document -- insufficient documentation, we've given them

millions of pages of documents, but we --

THE COURT: But you didn't do that in connection with the proof of claim as much as you did it in connection with a process that the parties adopted subsequent thereto.

MR. PRICE: Well, that's correct, but we certainly, in our proof of claim addendum, said that we would provide any documents that the debtors requested. But we did it as part of a process with the debtors whereby we attempt -- we're attempting to cooperate in order to resolve these claims and in order to set up some sort of process by which --

THE COURT: And what you're saying is that while you provided information that demonstrates that there are certain residential mortgage loans that you believe may involve breaches, there's a whole class of residential mortgage loans where it's not possible to know now whether there are breaches or potential breaches?

MR. PRICE: That's right.

THE COURT: Is that right?

MR. PRICE: That's right.

THE COURT: Okay. Thank you.

MR. PRICE: Okay. One other thing that I'd just like to mention because it does involve a number of the objection -- of the claims that are being objected to is a class of resecuritization claims. These were trusts where the actual certificates from these residential mortgage trusts were put

into a different trust. They don't have actual mortgage loans as part of the assets of the trust; they have certificates from trusts which have mortgage loans in them. We have provided the debtors with all the transaction documents in those instances, and we've been working with the debtors.

There's a few instances where certain certificates -- and those are from the SASCO Series 2003-37(a) and the SASCO Series 2003-31(a) -- these certificates were supposed to be put into these various trusts and they never were. I think we believe that they were taken as collateral right before the bankruptcy occurred. And we've been working with the debtor to try to find those an order to put those into these various trusts. On those, we don't know what other documents that the debtors are seeking to have. There are no individual mortgage loans. The only reason that they're included in this is not -- is because in a roundabout way they have a tide of residential mortgages, but those -- and we don't know what else to do besides provide them with these transaction documents. They haven't requested any other documentation, and we think that the objections with respect to those should be adjourned until the debtors can point to specific documents that they're seeking.

THE COURT: Okay.

MR. PRICE: Is there any other questions?

Okay. Thank you.

THE COURT: None at this time. Is there anyone else who is going to be speaking? Okay.

MR. ROLLIN: Anybody else?

THE COURT: Your turn.

MR. ROLLIN: Thank you, Your Honor. I think I'll take U.S. Bank first, although some issues will cross. I think both of the creditors, both of the trustees have told us that they have provided all the information that they have where they believe there's a loan specific breach that they can allege, and that means that with respect to all the others they don't have any proof or even allegation of a breach of representation and warranty for which the debtors are liable.

THE COURT: Well, here's a problem I'm having, and maybe you can use this opportunity to explain your position in a way that resolves my concern. As I understand it, in the universe of mortgages that we're talking about, there is a commercial problem in identifying the existence of the breaches that are at issue here, and that no rational trustee or loan servicer would perform an inventory of each and every loan to identify the existence of a possible breach in the absence of a loan default because to do so would be both incredibly time-consuming and expensive on the one hand, and probably of little utility on the other because for reasons that have been expressed it's very difficult to know whether or not there has been a potential breach of a rep and warranty until sometime

later in the process. And so in my mind, and I may be making a leap that is inappropriate, this is a little bit like an asbestos case where it's impossible to know fully every potential claimant by virtue of asbestos exposure, but nonetheless plans of reorganization are developed to deal with future claims, including those that haven't yet matured. Why is this not like that in the sense that we have a pool of loans, some percentage of which may, in fact, include these rep and warranty problems, but we don't know which ones yet, but it's probably possible to identify some computer program that can tell you with reasonable precision how many of these are likely to be bad? Those are my musings. What's your response?

MR. ROLLIN: There's a -- there are two questions there, I think, Your Honor, and one has to do with whether it's capable of being done, and that is identifying breaches before they go into default, which often, as I say, the trigger for a review. And then the second one is coming up with some sort of, what I think the Court is suggesting, an estimation based on a model. I'll address those in turn.

There's nothing about the event of a default that creates an effect that would bear on the existence of a breach of a representation and warranty. It is used as a shortcut as a trigger to search, and it is done so as a business decision of the trustee's. That's the way they choose to operate. Different trustees are more or less aggressive with respect to

the identification and prosecution of representation and warranty claims. There are other claimants who are not before the Court in these objections right now because they have provided a very significant amount of information. There are these claimants who are before the Court only to the extent they've provided no information but are not before the Court with respect to they've provided any scintilla of evidence of a loan level breach. And so it's their choice how they want to manage this operation on behalf of the certificate holders, and they've chosen whatever they've chosen, but they've been able to provide evidence as to some and no evidence, no scintilla, as to others.

Now, with respect to estimating, estimations have been used in other bankruptcies, and those are bankruptcies that are filed by -- where the debtor is an originator. We have a different situation here. We are in some case an originator, but primarily the debtors' role in these issues is as a seller into the securitization market and a depositor, and the debtors have very significant risk-shifting and indemnification rights as against third parties, the third party sellers. And in fact, one of things that I do is I prosecute those indemnification rights rather successfully against not -- unaffiliated companies. And so to establish a protocol, estimation protocol, by which the debtors pay out sight unseen, they don't obtain any of the information that would entitle the

estate to its indemnification from others, or appropriately shift the risk to transferors. We've talked about a number of times that the -- many of these claims must be prosecuted against other parties, and the language in the -- I set it down, but the language in the trust agreement says the trustee acknowledges that there's no liability for certain representations and warranties, the type that are issue here, and that the liability is that of the transferor. Any sort of an estimation protocol would do away with those protections that would benefit the estate and that would benefit other claimants.

The issue that Mr. Fagone spoke about, about the negotiations that are ongoing -- I want to make sure we're clear --- there is no proposal that -- and the debtors have no interest in this for the reasons I just mentioned -- by which based on some certain percentage all of the claims would be paid out. That's not a feature of the existing negotiations. The negotiations would still require a loan-by-loan determination. And to Mr. Fagone's credit, he just wasn't part of some of the more recent discussions; I'm not holding it against him in any way. He's been a terrific colleague, but that's just not the case. There still would involve a loan-by-loan resolution if -- to the extent that they can't come forward with the loan level breach they don't get paid. Now --

THE COURT: Yeah, but isn't there a problem with the

various objections here because if I were to grant relief you seek, any of these claims that might exist on a loan-by-loan basis go away; they're disallowed on the basis of insufficient documentation? But based upon the colloquy today, there seems to be little dispute that the exercise of going through a loan-by-loan review is both burdensome and commercially impracticable. There are just too many of the loans, and those that are performing are more likely than not loans that will not include breaches; they might, but they probably don't. So isn't there some injustice here in using the blunt instrument of an omnibus objection to claims on the basis of documentation in a setting in which it is very difficult to come up with the documentation that you seek? And in fact, there has been an ongoing process to gain that documentation which while not an admission is at least demonstrative proof that this is a difficult process.

MR. ROLLIN: The process that we're suggesting should apply to the resolution of these claims is the process to which the parties agreed in their contracts: nothing more, nothing less. If they wanted -- if a trustee or any other purchaser of a mortgage loan from Lehman wanted to put that loan back or to seek indemnity, they had the right to do so, and they had to satisfy certain conditions precedent of notice, an opportunity to cure, and then establish all of the elements of liability.

What the claimants are asking for now is relief from

their contractual agreement with the debtors with respect to the terms by which and the amount for which their claims would be resolved. Now, if the mechanism at this juncture of disallowance, the blunt instrument as Your Honor refers, is in the Court's opinion too blunt, then I think we should take into consideration what Mr. Fagone conceded both in his papers and here. And I, frankly, don't know exactly what U.S. Bank's position is on that, that there ought be no presumption of validity as to these claims. They've provided no information. And if there's no presumption of validity, then we can proceed on that basis.

THE COURT: I don't know what you just said --

MR. ROLLIN: Sure.

THE COURT: -- about --

MR. ROLLIN: If there's --

THE COURT: -- the presumption of validity.

MR. ROLLIN: If there is no presumption of validity with respect to the claims for the 800,000 loans, then, well, frankly, they've had an opportunity to adduce evidence and have not.

THE COURT: He said there is a presumption of validity.

MR. ROLLIN: No, I believe Mr. Fagone in his papers, in Citi's papers, states that they recognize that there may be no presumption of validity, but --

THE COURT: I -- did I misunderstand you?

MR. FAGONE: No, you did not, Your Honor. What I meant to say and I believe I said was we concede that in light of the objection there may not be a prima facie effect as to the amount of the claims. I was drawing the distinction between amount and validity, and I apologize.

MR. ROLLIN: No.

THE COURT: That's --

MR. ROLLIN: I --

THE COURT: -- what I thought you said.

MR. ROLLIN: I stand corrected. Well, then I won't attribute the concession to either of the claimants, but I think that's still an appropriate result that these don't rise to the level of a claim. I realize it's difficult, but they still don't rise to the level of a claim to which a prima facie validity should attach. And if the Court's disinclined to disallow it this time because the instrument is too blunt, then we can proceed on appropriate proceedings to resolve on a loan-by-loan basis if the parties can't reach an agreement. I think that's what the code and the procedures would call for in this instance.

THE COURT: Okay. Do you have more?

MR. ROLLIN: I'd only -- one last point, Your Honor, and that is -- well, I hope that this is one last point. Counsel for U.S. Bank raised some issues about GreenPoint. To

the extent that there's any issue with respect to GreenPoint, I got a flurry of e-mails in the middle of the night last night about GreenPoint. I'm certainly willing to --

THE COURT: Were you awake to read them?

MR. ROLLIN: No, I found them this morning, Your Honor. But this is a very recent, within the last twenty-four hours development. I don't know if they've made a claim about this, or whether they're making a claim now. It's completely unclear to us. And honestly, in preparation for the hearing, I haven't had an opportunity to review the ten or so e-mails with attached documents from U.S. Bank.

THE COURT: Okay.

MR. ROLLIN: That's all I have, Your Honor. Thank you.

THE COURT: Does the committee have anything to say about any of this?

MR. O'DONNELL: Your Honor, if I may, just briefly, Your Honor, Dennis O'Donnell, Milbank, Tweed, Hadley & McCloy, on behalf of the committee. And just an observation having sat through this argument, I think the thing that concerns us the most is the burden and the financial burden and where it lays in the resolution of these claims. I heard a lot of things about what can and cannot get done here. I don't think I heard it was utterly impossible to do a loan-by-loan review to establish whether there are, in fact, breaches that could be

evidenced now. What I heard was that it could be expensive.

But I think ultimately it should be the claimants' burden with respect to expense to do a cost benefit analysis of their own to determine which claims they could ultimately prove, and not put that burden on the estate and the Court to establish some kind of process where they would essentially get a free pass to prove that over a period of time. I think they need to make a determination, and the Court can let them do so, whether, in fact, they could ultimately prove and what quantity of claims they could prove and go with those and not try to prove the rest. Otherwise, you are imposing on the estate the burden of either litigation or a process that would not otherwise be required with respect to other types of claims. I mean there are claimants who elect not to prosecute claims because the cost of doing so would be -- would outweigh the potential benefit. And from our perspective, I think that is one measure that should guide the Court here in determining who should bear the burden.

THE COURT: Okay. I'm going to reserve judgment on this and not decide this from the bench today. And I think that the presentations by all parties highlight the complexity of the process of proving the existence and the amount of any claim for these representation and warranty breaches in residential loans. I don't rely on this, but I take judicial notice of the fact that problems in the residential loan

origination market and the securitization of such loans are a routine matter of concern in the business press, and as recently as yesterday the settlement proposed in the matter of Bank of America made headlines. There may be no comparability to that problem and the problem which is before the Court, but I am not inclined to simply broadly disallow all of these claims on the basis of an insufficient documentation objection.

I do think that the parties, while I am reserving judgment, should be engaged in ongoing efforts to try to come up with some reasonable, commercially practical approach to dealing with the problem. In theory, there may be no claims here. And at some point if there are claims, the trustees would be put to their proof, and whether they can actually succeed in carrying a burden of proof establishing residential and mortgage loan breaches is a matter as to which I am unable to express any view at the moment. It seems to me it would be extraordinarily difficult. So while these claims may reside in some nether world of theory, it seems to me that in practice it will be very difficult to establish these claims.

That having been said, I don't think that I am in a position to simply automatically disallow them based upon the statements that have been made today. I will also note that what we have had today is an argument and does not constitute an evidentiary hearing to the extent that any party believes that it would be useful to the process of reaching final

resolution of the claims to present actual evidence as to how one would go about identifying the existence of breaches and the burden of doing so. I am open to a request for the scheduling of such a hearing, but I will do so only at the request of a party. Let's take on the next one.

MR. DOZORSKY: Good morning, Your Honor. This is Attorney Dozorsky from California making a telephonic court appearance. Just to let the Court know this is regarding claim number 67087; it's an individual creditor claimant, Rosalinda Barrios. Opposition to the objection to this claim was filed. I'm not sure where we're at regarding these claim numbers, but I just wish the Court to know that I am making a telephonic appearance for this creditor.

THE COURT: I understand you're on the line, but I don't have that on my agenda.

MR. DOZORSKY: Oh, really? Because I received a notice from the Court stating that this hearing was to cover an objection to this particular claim. This was really about a time bar situation; however, in my opposition, I point out that this creditor had no knowledge of the bankruptcy until she filed her civil action against BNC Mortgage LLC, which is one of the consolidated entities, and then she found out about this bankruptcy.

THE COURT: Well, I can tell you that I'm not -- I'm happy to hear what you have to say, but this is not on the

agenda for today.

MR. DOZORSKY: Okay. Well, all right, because that's not what the notice that I got says. It may have mentioned this hearing today.

THE COURT: What do the debtors say about this?

MS. DECKER: Your Honor, all contested late-filed claims objections -- I'll repeat that: all contested late-filed objections were adjourned and will not be heard today. And the debtors sent notices of adjournment approximately a week and a half a go by overnight mail, so.

MR. DOZORSKY: By, "adjournment," what does that mean practically? That the objection to the claim is dropped or what, or is going to be continued, the hearing will be continued to another date? What does that really mean?

MS. DECKER: The hearing will be continued at least until the July 21st hearing which will occur at 10 a.m. It may be further adjourned by the debtors, in which case another notice would be sent out.

MR. DOZORSKY: Okay. So I should be expecting a notice that this -- as of now, the hearing on those types of claims then is, in fact, continued to July 21st at 10 a.m., is that correct?

MS. DECKER: That is correct.

MR. DOZORSKY: Okay. Okay. Very good. Thank --

MS. DECKER: Thank --

MR. DOZORSKY: -- you very much.

MS. DECKER: Thank you.

MR. BERNSTEIN: Your Honor, Mark Bernstein from Weil on behalf of the Lehman debtors again. We have one more matter: two separate motions on the agenda relating to a late-filed claim motion filed more than a year ago by Mark Glasser.

THE COURT: Right.

MR. BERNSTEIN: The first motion, I guess, to be heard today is motion of his counsel to withdraw as counsel to Mr. Glasser. And then I'm not sure if Mr. Glasser is here or not, but originally scheduled today was also the evidentiary hearing that he's been -- that has been adjourned several times. So I think counsel to Mr. Glasser is here to speak.

THE COURT: Okay. Let's -- let me find out if Mr. Glasser is here. Is Mr. Glasser here?

MR. GRAIFMAN: I -- Your Honor, Brian Graifman, Gusrae, Kaplan, Bruno & Nusbaum PLLC, counsel for Mr. Glasser. I don't see him here, but I did speak with him on the phone weeks ago about this. He received notice. He actually got notice late because he had moved once again, although he had not informed me, but he did receive notice by June 14th. I did speak with him, e-mailed -- extensive e-mail with him. I gave him a copy of the notice of motion, the operative second amended order, a case management order, and essentially the motion speaks for itself. We're really, you know, not being

paid for our work at this point in time and ask to withdraw as counsel.

THE COURT: I take it based upon your communications with Mr. Glasser you can confirm that he does not oppose the motion?

MR. GRAIFMAN: He did not oppose -- he did not express that he opposed the motion. I offered him the -- I explained in the notice of motion that he could file an opposition. The notice was actually a more fulsome notice than I would normally give because of the pro se -- of the nature of him not being an attorney. He's a professional, however, and he has used other attorneys, so he kind of knows the score in some respect.

THE COURT: Okay. I'm going to grant your motion to withdraw as counsel. I read the papers indicating both nonpayment and an unspecified ethical concern, and on the basis of that and the fact that Mr. Glasser has not appeared to oppose your motion and has filed no papers in opposition to the motion, the motion is granted as unopposed.

MR. GRAIFMAN: Thank you, Your Honor.

THE COURT: But you'll need to submit an order.

MR. GRAIFMAN: Okay.

THE COURT: And if you have one, you can just give it to debtors' counsel who can collect orders for today's hearing.

MR. GRAIFMAN: Right. I don't have one with me, but should I file it online, or give --

THE COURT: No, you should --

MR. GRAIFMAN: -- give to debtors' counsel?

THE COURT: You should either deliver an order to chambers on a disk, or if you want coordinate with debtors' counsel, they've generally been fairly good at managing the flow of paper.

MR. GRAIFMAN: Thank you, Your Honor.

THE COURT: Okay. Since Mr. Glasser is not present in Court to prosecute on his own, his personal motion to extend time for filing his claim I'm not hearing that today. I think in fairness to Mr. Glasser it would be useful to give him direct notice that unless he takes steps on -- in his individual capacity or through replacement counsel to prosecute this matter which has been pending for well over a year, that it would be reasonable for him to either voluntarily withdraw the motion, or absent such withdrawal for it to be listed at another omnibus hearing on claims objections. At which point, if he fails to show to prosecute the matter, I will deny his motion with prejudice.

MR. GRAIFMAN: Your Honor, I will provide Mr. Bernstein with Mr. Glasser's current contact information: address, phone, and e-mail.

THE COURT: Okay. Thank you. Is there any more for today? Then we are adjourned.

(Whereupon these proceedings were concluded at 11:43 AM)

I N D E X

RULINGS

1	145th omnibus objection to claims granted	21	4
2	146th omnibus objection to claims granted	21	25
3	147th omnibus objection to claims granted	22	18
4	Supplemental order for the 111th omnibus	23	18
5	objection to claims granted		
6	133rd, 134th, and 135th omnibus objection to	24	7
7	claims are granted		
8	136th omnibus objection granted	25	4
9	138th omnibus objection to claims is granted	25	18
10	109th Omnibus objection granted as to claims	26	21
11	on Exhibit 18		
12	109th Omnibus objection granted as to claims	27	4
13	on Exhibit 16		
14	Motion to withdraw as counsel to Mr. Glasser	75	13
15	granted		
16			
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C E R T I F I C A T I O N

I, Dena Page, certify that the foregoing transcript is a true and accurate record of the proceedings.

Dena Page

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